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East Timor and Kuwait

1. I have been asked to comment on the legal significance of the factual differences between the invasion of Kuwait in 1990 and that of East Timor in 1975. The most important of these differences is that Kuwait was an independent sovereign state at the time of its invasion, whereas East Timor was a colonial territory.

2. The prohibition on the use of force in Article 2(4) of the UN Charter, and under customary international law, makes no distinction between sovereign and non-self-governing territories. Iraq's use of force against Kuwait was therefore unlawful in precisely the same way as was Indonesia's invasion of East Timor. Even if it is correct that a power vacuum of some kind existed in East Timor at the time of Indonesia's invasion, clearly this does not - and could not - afford an exception to the prohibition on the threat or use of force.

3. The significance of the colonial status of East Timor is that it gave the East Timorese people a right of self-determination. This right entitled the people to choose for themselves their future status. The normal way of exercising this right in a decolonisation situation such as East Timor's is by a referendum or by the decision of representatives elected on the basis of universal suffrage, generally under United Nations supervision. The East Timorese people's right of self-determination entailed a correlative obligation on the part of other states at the very least not to impede the decolonisation process. Indonesia impeded this process by 'integrating' East Timor without an appropriate mandate from the East Timorese people. The People's Assembly of 1976, usually cited by Indonesia as its mandate for integration, was not elected on the basis of universal suffrage and in a number of other respects as well failed to comply with the applicable modalities. This, then, is an additional ground for holding the Indonesian invasion unlawful, which does not apply to Iraq's invasion of Kuwait.

4. The Security Council called on Indonesia to withdraw from East Timor, and affirmed the right of self-determination of the East Timorese people in 1975 and again in 1976. In the case of Kuwait the Security Council went further and made a determination pursuant to Article 39 of the UN Charter that there had been a breach of international peace and security. It then proceeded to order economic sanctions and eventually to approve the use of force under Chapter VII of the UN Charter. The fact that the Security Council did not do this in relation to East Timor in no way absolves Indonesia from responsibility for its contravention of the prohibition on the use of force and the principle of self-determination. It simply indicates that the Security Council did not consider that international peace and security were implicated where East Timor was

concerned. This, of course, is a reflection of the perceived difference in importance of - and in turn the differing levels of political support for - East Timor and Kuwait.

5. The United Nations explicitly ordered states not to recognise the Iraqi annexation of Kuwait. Again, this was a more forceful response than that which followed the Indonesian annexation of East Timor, where no such order was issued. However, the fact that the question of the decolonisation of East Timor remains - in the face of vigorous Indonesian opposition - on the agenda of the UN's Special Committee on Decolonisation clearly indicates that the United Nations does not recognise the lawfulness, or even the fact, of Indonesia's integration of East Timor. In the eyes of the United Nations East Timor remains a Portuguese colony, just as, notwithstanding Iraq's declarations to the contrary, Kuwait remained the independent state of Kuwait.

6. To conclude, the only significance of the differing status of Kuwait and East Timor at the time of their respective invasions lies in the application of the principle of self-determination. Indonesia unlawfully interfered with the decolonisation process in East Timor, whereas no such charge can be laid against Iraq. While the Iraqi invasion of Kuwait was deemed to have more serious ramifications for international peace and security, and hence to warrant a more drastic response, it stood on a par with the Indonesian invasion of East Timor as regards the unlawfulness of the use of force.

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